

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION**

MicrobeGuard, Inc.,

Civil No. 07mc8 RHK/AJB

Plaintiff,

v.

REPORT AND RECOMMENDATION

MicrobeGuard of the Gold Coast,

Defendant,

This case is before the Court, United States Magistrate Judge Arthur J. Boylan, 638 U.S. Courthouse, 316 No. Robert St., St. Paul, Minnesota, on the Court's *sua sponte* recommendation to dismiss. The action was initially filed and docketed as a miscellaneous case filing consisting solely of a notice of motion and motion to compel arbitration [Docket No. 1], without an initiating complaint or comparable pleading. The matter is now considered on the file and documents contained therein, including the Court's Order dated February 13, 2007, in which the Court determined that the plaintiff had not paid the correct filing fee for this type of action. The plaintiff was expressly ordered to pay the remaining amount of the proper filing fee on or before February 26, 2007, "failing which will result in dismissal of the matter without prejudice." The payment date has now passed and plaintiff has not paid the required additional filing fee.

Therefore, based upon the entire record in this matter, **IT IS HEREBY RECOMMENDED THAT** this action be dismissed without prejudice and without award of costs or fees to either party. Hearing that was scheduled to take place on April 4, 2007, is **stricken** from the Court's calendar.

Dated: March 6, 2007

s/ Arthur J. Boylan
Arthur J. Boylan
United States Magistrate Judge

Pursuant to Local Rule 72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties, written objections which specifically identify the portions of the Report to which objections are made and the bases for each objection. This Report and Recommendation does not constitute an order or judgment from the District Court and it is therefore not directly appealable to the Circuit Court of Appeals. Written objections must be filed with the Court before March 19, 2007.